

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NINTENDO OF AMERICA INC.,

Plaintiff,

vs.

LE HOANG MINH, d/b/a WINMART

Defendant.

NO. 2:20-cv-01707-RSM-JRC

**[PROPOSED] FINAL JUDGMENT
AND PERMANENT INJUNCTION**

The Clerk of this Court, having previously entered default against Defendant Le Hoang Ming, d/b/a Winmart (“Defendant”), Dkt. 15, and this matter having come before the Court on Plaintiff Nintendo of America Inc.’s Motion for Entry of Default Judgment (“Motion”), Dkt. 16, against Defendant, the Court has determined that Nintendo’s Motion should be **GRANTED**. Therefore, pursuant to the Digital Millennium Copyright Act’s (DMCA) anti-trafficking provisions under 17 U.S.C. § 1201 and abuse of the DMCA’s counter-notification system under 17 U.S.C. § 512(f), and this Court’s inherent equitable powers, **IT IS THEREFORE ORDERED:**

1. A permanent injunction is entered against Defendant, its officers, agents, servants, employees, attorneys, and all other persons or entities in active concert, participation, or privity with any of these parties, shall be permanently enjoined and restrained from:

- A. Circumventing or assisting to circumvent any technological security measures that effectively controls access to Nintendo’s copyrighted works;
- B. Manufacturing, offering for sale, selling, providing, distributing, exporting, importing, shipping, or otherwise trafficking in, into the United States or to customers located in the United States, directly or indirectly, any and all products, services, devices, components or parts thereof that are primarily designed or

produced for circumventing the technological security measures for Nintendo's consoles, products and protected works ("circumvention devices"); and

C. Offering for sale, selling, providing, distributing, exporting, importing, or shipping to any persons or other entities located in the United States any circumvention device(s), including specifically Defendant's RCM Loader product, or any circumvention device(s) identical in function offered by Defendant, under any name; and

D. Directly or indirectly infringing, or causing, enabling, facilitating, encouraging, promoting, and inducing or participating in the infringement of, any of Nintendo's copyrighted works, whether now in existence or hereafter created.

2. It is further ORDERED all other persons or entities in active concert, participation, or privity with Defendant, including specifically any seller or online marketplaces who receive actual notice of this Order, shall immediately cease and permanently refrain from offering for sale, selling, providing, distributing, exporting, importing, or shipping to any persons or other entities located in the United States Defendant's circumvention device(s), including specifically Defendant's RCM Loader product, or any circumvention device(s) identical in function offered by Defendant, under any name.

3. Defendant and those with actual notice of this Order shall within three (3) business days of receipt of this Order disable and cease providing services for any vendor accounts that engage in the advertisement and/or sale of Defendant's circumvention device(s), including specifically Defendant's RCM Loader product, or any device or electronic material that violates Nintendo's rights under the DMCA.

4. It is further ORDERED under 17 U.S.C. § 1203 Nintendo may authorize the seizure, impoundment, and destruction of all circumvention devices, all copies of software accompanying the RCM Loader, and all other electronic material or physical devices—including

1 any hard drives or other electronic storage devices containing such material—that violate
2 Nintendo’s rights under the DMCA or infringe upon copyrights owned or exclusively licensed
3 by Nintendo.

4 5. It is further ORDERED that the Court awards \$2,500 of statutory damages under
5 17 U.S.C. § 1203(c)(3)(a).

6 6. No bond or other security is required in connection with this Final Judgment and
7 Permanent Injunction.

8 7. For three years from the date of entry of final judgment, the Court shall retain
9 jurisdiction for the purpose of modifying or interpreting this Order, the enforcement thereof or
10 the punishment of any violations thereof. *See* 17. U.S.C. § 1203(c)(4) (providing that courts may
11 award triple damages upon finding that a person violated § 1201 or § 1202 within three years
12 after entry of final judgment).

13 8. Within thirty (30) days after service of judgment with notice of entry thereof,
14 Defendant shall file with the Court and serve upon Nintendo a written report under oath setting
15 forth in detail the manner in which Defendant has complied with the preceding paragraphs of this
16 Order.

17 9. Any violation of this Order may be punishable as a contempt of Court, in addition
18 to any and all other remedies available at law or in equity.

19 10. Nintendo may serve this judgment electronically on Defendant by sending it to
20 the same email address listed in this Court’s order authorizing electronic service of process.

21 11. With no remaining claims to adjudicate in this matter, final judgment as to liability
22 in this action shall be entered against Defendant and in favor of Nintendo on all of the claims set
23 forth in Nintendo’s Complaint.

24 Dated this _____ day of _____, 2021.
25

UNITED STATES DISTRICT JUDGE

DATED April 14, 2021

Presented by: s/ Christopher Weimer

Christopher Weimer (pro hac vice forthcoming)
Travis W. Wimberly (pro hac vice forthcoming)
Pirkey Barber PLLC
1801 E. 6th St., Suite 300
Austin, TX 78702
(512) 322-5200
(512) 322-5201 (fax)
cweimer@pirkeybarber.com
twimberly@pirkeybarber.com

s/ Chelsey L. Mam

Michael Rosenberger
Chelsey L. Mam
Gordon Tilden Thomas & Cordell LLP
One Union Square
600 University St., Suite 2915
Seattle, WA 98101
(206) 467-6477
(206) 805-3161 (fax)
mrosenberger@gordontilden.com
cmam@gordontilden.com

Attorneys for Plaintiff Nintendo of America, Inc.